

§ 733.5

the part of the spouse. The evidence may consist of—

(i) *U.S. Navy members.* An affidavit of the service member, relative, disinterested person, public official, or law enforcement officer, and written admissions by the spouse contained in letters written by that spouse to the service member or other persons. However, affidavits of the service member and relatives should be supported by other corroborative evidence. All affidavits must be based upon the personal knowledge of the facts set forth; statements of hearsay, opinion, and conclusion are not acceptable as evidence.

(ii) *U.S. Marine Corps members.* The Marine's commander may consider all pertinent facts and circumstances. The general court-martial convening authority may consider any reliable evidence including, but not necessarily limited to, the following: affidavits of the Marine, relatives, or other witnesses; admissions of the spouse, including verbal and written statements or letters written by the spouse to the Marine or other persons; pertinent photographs or court orders; and admissions by the person with whom the spouse allegedly had sexual liaisons. Witness statements should ordinarily state facts that were personally observed. Statements that merely state a conclusion without providing the personal observations on which the conclusion is based are generally unpersuasive.

(iii) The request for waiver of support of a spouse should be submitted to the Director, Navy Family Allowance Activity or in the case of a member of the U.S. Marine Corps, the general court-martial convening authority, with a complete statement of the facts and substantiating evidence, and comments or recommendations of the commanding officer.

(2) *Action.* After a written complaint that a member has failed or refused to furnish support for his or her spouse or children has been received, and the member has been counseled with regard to his/her rights and obligations in the support matter, continued failure or refusal, without justification, to furnish support for dependents in accordance with the provisions of a valid court order, written agreement, or, in

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the absence of a court order or agreement, the appropriate support guide set forth above, will be a basis for consideration of disciplinary or administrative action which may result in the member's separation from active service.

(b) [Reserved]

[44 FR 42190, July 19, 1979, as amended at 65 FR 62618, Oct. 19, 2000]

§ 733.5 Determination of paternity and support of illegitimate children.

(a) *Illegitimate children.* If the service member desires marriage, leave for this purpose is recommended whenever consistent with the needs or exigencies of the service. When the blood parents of an illegitimate child marry, the child is considered to be legitimized by the marriage unless a court finds the child to be illegitimate.

(b) *Judicial order or decree of paternity or support.* Normally any order or decree which specifies the obligation to render support of illegitimate children will include within it a determination of paternity of such children; however, some jurisdictions provide for determinations of the legal obligation to support illegitimate children without a determination of paternity. Either type of order or decree falls within the scope of this paragraph. If a judicial order or decree of paternity or support is rendered by a United States or foreign court of competent jurisdiction against a member of the Navy or Marine Corps on active duty, the member concerned will be informed of his moral and legal obligations as well as his legal rights in the matter. The member will be advised that he is expected to render financial assistance to the child regardless of any doubts of paternity that the member may have. If the court order or decree specifies an amount of support to be provided the member will be expected to comply with the terms of such decree or order. If no amount is specified, support should be rendered in accordance with such reasonable agreement as may be made with the mother or legal guardian of the child or, in the absence of such agreement, in accordance with the applicable guide set forth above. If the member refuses to comply with the

terms of the court order, administrative action will be taken as indicated in § 733.4.

(1) *Court of competent jurisdiction.* A court of competent jurisdiction is generally a court that has jurisdiction over the subject matter and the parties involved. As a general rule, the competency of the court to render the judicial order or decree may be tested by the enforceability of the order or decree. Normally, although not always, personal service of the court's process on the member is considered essential. With respect to a foreign judicial order or decree, the general rule is that where the defendant was a citizen or subject of the foreign country in which the order or decree was issued, the court may have acquired jurisdiction over the member by any mode of service or notice recognized as sufficient by the laws of that country. It should be noted, however, that an order or decree against a citizen or permanent resident of another country, without personal service or personal notice of the action to him or her, is null and void unless the member voluntarily submitted to the jurisdiction by appearing and contesting the action. In the event there is doubt as to the competency of the court to enter the order or decree, the question shall be referred to the Judge Advocate General.

(2) [Reserved]

(c) *Nonjudicial determination.* In the absence of an adjudication of paternity or of a court-ordered obligation to furnish support, the member shall be privately consulted and asked, where appropriate, whether he or she admits either paternity of, or the legal obligation to support, the child or expected child. If the answer is affirmative, the member shall be informed that he or she is expected to furnish support as set forth in paragraph (b) of this section. Where paternity or the legal obligation to support is admitted by a male member, such member should be informed of his moral obligation to assist in the payment of prenatal expenses.

(d) *Members not on active duty.* Allegations of paternity against members of the naval service who are not on active duty will be forwarded to the individual concerned in such a manner as

to insure that the charges are delivered to the addressee only. The correspondence should be forwarded via the commandant of the naval district in which the member resides.

(e) *Former members.* (1) If a certified copy of a judicial order or decree of paternity or support duly rendered by a United States or foreign court of competent jurisdiction against a former member of the Navy or Marine Corps is submitted, his or her last-known address will be furnished to the complainant with return of the correspondence and court order. The complainant will be informed of the date of discharge and advised that the individual concerned is no longer a member of the Navy or Marine Corps in any capacity.

(2) Where there has been no court adjudication, the correspondence will be returned to the complainant with an appropriate letter stating that the individual is no longer a member of the Navy or the Marine Corps in any capacity and giving the date of his or her discharge or final separation except that the last-known address of the former member shall be furnished to the claimant if the complaint against the former member is supported by a document which establishes that the former member has made an admission or statement acknowledging paternity or responsibility for support of a child before a court of competent jurisdiction, administrative or executive agency, or official authorized to receive it. In cases where the complaint, along with the corroboration of a physician's affidavit, alleges and explains an unusual medical situation which makes it essential to obtain information from the alleged father in order to protect the physical health of either the prospective mother or the unborn child, the last-known address of the former member shall likewise be furnished to the claimant.

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